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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,545	11/28/2003	David Frank	9351-310	8336
1059	7590	06/09/2006	EXAMINER	
BERESKIN AND PARR 40 KING STREET WEST BOX 401 TORONTO, ON M5H 3Y2 CANADA			WILKINS III, HARRY D	
			ART UNIT	PAPER NUMBER
			1742	

DATE MAILED: 06/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/722,545

Applicant(s)

FRANK ET AL.

Examiner

Harry D. Wilkins, III

Art Unit

1742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-64 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-32, drawn to a power supply system, classified in class 429, subclass 17.
 - II. Claims 33-36, drawn to an electrolyzer module, classified in class 204, subclass 241.
 - III. Claims 37-42, drawn to an electrolyzer module, classified in class 204, subclass 228.5.
 - IV. Claims 43-44, drawn to an electrolyzer module, classified in class 204, subclass 266.
 - V. Claims 45-46, drawn to an electrolyzer module, classified in class 204, subclass 263.
 - VI. Claims 47-50, drawn to a fuel cell module, classified in class 429, subclass 12.
 - VII. Claims 51-56, drawn to a fuel cell module, classified in class 429, subclass 25.
 - VIII. Claims 57-62, drawn to a hydrogen storage module, classified in class 429, subclass 17.
 - IX. Claim 63, drawn to an electrolyzer module, classified in class 204, subclass 253.
 - X. Claim 64, drawn to a fuel cell module, classified in class 429, subclass 12.

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The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II-X are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because claim 1 does not require all of the specifics of each of the claims of groups II-X. The subcombinations have separate utility such as use with a power supply system not including the control module as claimed. Further, the electrolyzer modules could be used to produce hydrogen to be burned, not fed to a fuel cell. Additionally, the fuel cell modules could be used with hydrogen produced by an apparatus other than an electrolyzer.
3. Inventions II, III, IV, V and IX are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, each of subcombinations II, III, IV, V and IX have separate utility such as in an electrolyzer absent the features of the other subcombinations. See MPEP § 806.05(d).
4. Inventions VI, VII and X are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, each of subcombinations VI,

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VII and X have separate utility such as in a fuel cell absent the features of the other subcombinations. See MPEP § 806.05(d).

5. Inventions (II, III, IV, V and IX) and (VI, VII and X) are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombinations VI, VII and X have separate utility such as with a hydrogen production apparatus other than a water electrolyzer. See MPEP § 806.05(d).

6. Inventions VIII and each of groups II-VI, IX and X are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination VIII has separate utility such as in a fuel cell system not requiring any of the details of groups II-VI, IX and X. See MPEP § 806.05(d).

7. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

8. Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

9. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

10. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

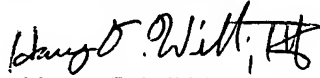
11. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry D. Wilkins, III whose telephone number is 571-272-1251. The examiner can normally be reached on M-F 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy V. King can be reached on 571-272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Harry D Wilkins, III
Primary Examiner
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hdw